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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

SEP - 3 2008

MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF XO
COMMUNICATIONS SERVICES, INC. FOR
AUTHORITY TO PROVIDE ITS SECURITY IN
CONNECTION WITH FINANCING
TRANSACTIONS.

DOCKET NO. T-04302A-08-0176

DECISION NO. 70471ORDER

Open Meeting
August 26 and 27, 2008
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On March 26, 2008, XO Communications Services, Inc. ("XOCS" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for authorization to guarantee and otherwise provide security in connection with a refinancing involving its parent company, XO Communications, LLC ("XO") ("Application"), pursuant to A.R.S. § 40-285 and Arizona Administrative Code ("A.A.C.") R14-2-804.

2. The Applicant caused notice of the Application to be published in the *Arizona Business Gazette* on April 17, 2008.

3. On June 2, 2008, the Commission's Utilities Division Staff ("Staff") filed a Staff Report recommending conditional approval of the request for encumbrance of assets.

4. XOCS is a foreign corporation authorized to do business in Arizona. The Commission authorized XOCS to provide intrastate and interstate telecommunications services in Arizona under Decision No. 67460 (January 4, 2005).

1 5. XOCS is wholly owned by XO, which is wholly owned by XO Holdings, Inc.

2 6. XOCS and XO provide telecommunications services in 49 states and the District of
3 Columbia.

4 7. XOCS now seeks approval to provide its guarantee and otherwise provide security in
5 connection with a refinancing involving XO, which will be the borrower under the terms of a Note
6 Purchase Agreement dated March 13, 2008. XO will issue and sell its Notes to Arnos Corp. for up to
7 \$145 million. The Notes will mature April 15, 2009, and will be guaranteed by XO Holdings, other
8 subsidiaries of XO, and XOCS.

9 8. The purpose of the proposed refinancing is provide the XO companies with the
10 financial resources needed to expand its business and to continue to compete in the
11 telecommunications market.

12 9. XOCS asserts that its participation in the refinancing arrangements will not result in a
13 change in its management, operations or ownership. The transaction will not alter rates, terms, or
14 conditions of service to Arizona customers.

15 10. XOCS asserts that the transaction is in the public interest because it will enhance
16 XOCS' ability to grow and compete in the telecommunications market in Arizona and nationwide
17 and provide to customers alternative services in this competitive area.

18 11. A.R.S. § 40-301 provides that foreign public service corporations providing
19 communications services within the state whose physical facilities are also used in providing
20 communications service in interstate commerce are not required to obtain authorization from the
21 Commission to issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness
22 payable at periods of more than twelve months. Because the entities involved in this transaction are
23 foreign public service corporations, pursuant to A.R.S. § 40-301(D) the Applicant's proposed
24 financing is exempt from Commission approval.

25 12. However, A.R.S § 40-285 requires public service corporations to obtain Commission
26 authorization to encumber certain utility assets. According to Staff, the statute serves to protect
27 captive customers from a utility's disposition of assets that are necessary for the provision of service.
28 thereby preventing any service impairment due to disposal of critical assets necessary to provide

1 service.

2 13. Further, A.A.C. R14-2-804(B) requires that a utility must obtain Commission approval
3 before obtaining a financial interest in any affiliate not regulated by the Commission, or guarantee, or
4 assume the liabilities of such affiliate. Under A.A.C. R14-2-804(C), the Commission shall review the
5 transaction to determine if it would impair the financial status of the public utility, otherwise prevent
6 it from attracting capital at fair and reasonable terms, or impair the ability of the public utility to
7 provide safe, reasonable and adequate service.

8 14. Staff determined that the proposed transaction will not impair the financial status of
9 the public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair
10 the ability of the public utility to provide safe, reasonable and adequate service.

11 15. Ultimately, based on its review of the proposed transaction, Staff determined that the
12 pledge of the Applicant's Arizona assets would not impair the availability of service to the customers
13 since the XOCS provides competitive services that are available from alternative service providers.
14 However, Staff recommends that, because customers who have prepaid for service or made deposits
15 may have exposure to losses, any authorization for encumbrances should include customer protection
16 for prepayments and deposits.

17 16. Staff recommends approval of the Applicant's request to pledge assets as security for
18 \$145 million in debt subject to the condition that all Arizona customer deposits and prepayments be
19 excluded from encumbrance or, in the alternative, be secured by a bond or an irrevocable sight draft
20 letter of credit, which is not included in the pledged collateral.

21 17. Staff recommends that the Applicant be authorized to engage in any transactions and
22 to execute or cause to be executed any documents necessary to effectuate the authorizations requested
23 in the Application.

24 18. Staff further recommends that the Applicant file with Docket Control, as a compliance
25 item in this docket, a notice of the completed transaction within 60 days of closing

26 19. Staff states that there are no compliance issues with the Applicant.

27 20. Staff's recommendations are reasonable and should be adopted.

28

CONCLUSIONS OF LAW

1
2 1. XOCS is a public service corporation within the meaning of Article XV of the Arizona
3 Constitution, A.R.S. § 40-285.

4 2. The Commission has jurisdiction over XOCS and the subject matter of the Application.

5 3. Notice of the Application was given in accordance with the law.

6 4. The encumbrance approved herein is for the purposes stated in the Application and is
7 reasonably necessary for those purposes.

8 5. Pursuant to A.R.S. § 40-301, Commission approval of the financing is not required.

9 6. Pursuant to A.A.C. R14-2-801 *et seq.*, the proposed transaction does not impair XOCS'
10 financial status.

ORDER

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12 IT IS THEREFORE ORDERED that the Application by XO Communications Services, Inc.
13 for authorization to encumber assets as security for refinancing up to \$145 million as provided for
14 herein, shall be, and hereby is, granted, subject to the condition that either all Arizona customer
15 deposits and prepayments are excluded from encumbrance or, in the alternative, are secured in the
16 amount of the customer deposits and prepayments either by a performance bond or an irrevocable
17 sight draft letter of credit, which are not included in the pledged collateral.

18 IT IS FURTHER ORDERED that XO Communications Services, Inc. shall, within 60 days
19 of the effective date of this Decision, file with Docket Control as a compliance item in this docket,
20 either a statement that all Arizona customer deposits and prepayments are excluded from
21 encumbrance, or copies of the performance bond or irrevocable sight draft letter of credit in the
22 amount of the customer deposits and prepayments, and provide the original performance bond or
23 irrevocable sight draft letter of credit to the Commission's Business Office for safekeeping.

24 IT IS FURTHER ORDERED that XO Communications Services, Inc. is hereby authorized to
25 engage in any transactions and to execute or cause to be executed any documents so as to effectuate
26 the authorizations granted herein.

27 ...

28 ...

1 IT IS FURTHER ORDERED that XO Communications Services, Inc. shall file with Docket
 2 Control, as a compliance item in this docket, a notice of the completed transaction within 60 days of
 3 closing.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6
 7 *Samuel L. Bloom*
 8 CHAIRMAN

William A. Mundell
 COMMISSIONER

9 *Jeffrey McHale*
 10 COMMISSIONER

Devin
 COMMISSIONER

Gary Quinn
 COMMISSIONER

11
 12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
 13 Director of the Arizona Corporation Commission, have
 14 hereunto set my hand and caused the official seal of the
 Commission to be affixed at the Capitol, in the City of Phoenix,
 this 3rd day of Sept., 2008.

15 *Brian C. McNeil*
 16 BRIAN C. McNEIL
 17 EXECUTIVE DIRECTOR

18
 19 DISSENT _____

20
 21 DISSENT _____

SERVICE LIST FOR: XO COMMUNICATIONS SERVICES, INC.

DOCKET NOS.: T-04302A-08-0176

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